

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL BAISDEN,

Plaintiff,

v.

I'M READY PRODUCTIONS, INC.,
IMAGE ENTERTAINMENT, INC.,
A.L.W. ENTERTAINMENT, INC.,
JE'CARYOUS JOHNSON, and
GARY GUIDRY,

Defendants.

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CIVIL ACTION NO. H-08-0451

VERDICT FORM

Michael Baisden's Claims

QUESTION NO. 1:

Do you find that IRP or Image directly infringed copyrights owned by the Plaintiff in the novels *Men Cry in the Dark* and *The Maintenance Man*?

Answer "Yes" or "No" as to each alleged act of infringement.

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	<u>NO</u>	<u>NO</u>	<u>NO</u>
Image Entertainment	<u>NO</u>	<u>NO</u>	<u>NO</u>

If you answered "Yes" to any act(s) of infringement in Question No. 1, then answer Question Nos. 2-8 as to the same act(s) of infringement. Otherwise, do not answer Question Nos. 2 -8.

QUESTION NO. 2:

Do you find that any of the following Defendants contributed to an act of infringement of copyrights owned by the Plaintiff in the novels *Men Cry in the Dark* and *The Maintenance Man*?

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je'Caryous Johnson	_____	_____	_____

QUESTION NO. 3:

Do you find that either of the following Defendants vicariously infringed copyrights owned by the Plaintiff in the novels *Men Cry in the Dark* and *The Maintenance Man*?

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Vide Sales	<i>Men Cry in the Dark</i> 2005 Tour
Gary Guidry	_____	_____	_____
Je'Caryous Johnson	_____	_____	_____

QUESTION NO. 4:

State the amount of damages per infringement that you find the Plaintiff sustained as a result of each infringement of Plaintiff's copyrights.

Consider the elements of damages listed below and none other. Consider each element separately. Do not include damages for one element in any other element. Do not include interest on any amount of damages you find. .

Answer in dollars and cents as to each infringement

(a) Defendant's profits from sales of videos and 2005 tour of *Men Cry in the Dark*

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	\$_____	\$_____	\$_____
Image Entertainment	\$_____	\$_____	<u>Not Applicable</u>
A.L.W. Entertainment	\$_____	\$_____	<u>Not Applicable</u>
Gary Guidry	\$_____	\$_____	\$_____
Je'Caryous Johnson	\$_____	\$_____	\$_____

(b) Damages that Plaintiff sustained, if any, resulting from the following:

Maintenance Man
Failed or Delayed
Movie Deal

IRP \$ _____

Image
Entertainment \$ _____

A.L.W.
Entertainment \$ _____

Gary Guidry \$ _____

Je'Caryous
Johnson \$ _____

QUESTION NO. 5:

Are Plaintiff's claims for copyright infringement barred by equitable estoppel?

Answer "Yes" or "No" as to each defendant and each act of infringement.

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	_____	_____	_____
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je'Caryous Johnson	_____	_____	_____

QUESTION NO. 6:

Are Plaintiff's claims for copyright infringement barred by waiver?

Answer "Yes" or "No" as to each defendant and each act of infringement.

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	_____	_____	_____
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je'Caryous Johnson	_____	_____	_____

QUESTION NO. 7:

Are Plaintiff's claims for copyright infringement barred by quasi-estoppel?

Answer "Yes" or "No" as to each defendant and each act of infringement.

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	_____	_____	_____
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je'Caryous Johnson	_____	_____	_____

QUESTION NO. 8:

Are Plaintiff's claims for copyright infringement barred by laches?

Answer "Yes" or "No" as to each defendant and each act of infringement.

	<i>Maintenance Man Videos</i>	<i>Men Cry in the Dark Videos</i>	<i>Men Cry in the Dark 2005 Tour</i>
IRP	_____	_____	_____
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je'Caryous Johnson	_____	_____	_____

QUESTION NO. 9:

Do you find that any Defendant appropriated the Plaintiff's name for the Defendant's commercial advantage without the Plaintiff's authorization with regard to the following acts?

Answer "Yes" or "No" as to each Defendant and each act named below.

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	<u>NO</u>	<u>NO</u>	<u>N</u>
Image Entertainment	<u>NO</u>	<u>NO</u>	<u>Not Applicable</u>
A.L.W. Entertainment	<u>NO</u>	<u>NO</u>	<u>Not Applicable</u>
Gary Guidry	<u>NO</u>	<u>NO</u>	<u>NO</u>
Je'Caryous Johnson	<u>NO</u>	<u>NO</u>	<u>NO</u>

If you answered “Yes” to any act(s) of appropriation of Mr. Baisden’s name without authorization in Question No. 9, then answer Question Nos. 10-11 as to the same defendant(s) and act(s). Otherwise, do not answer Question Nos. 10-11.

QUESTION NO. 10:

Do you find by clear and convincing evidence that the harm to Baisden caused by any act of appropriation of his name without authorization found in Question No. 9 resulted from malice, fraud, or gross negligence? Answer “Yes” or “No” for each defendant and each act for which you answered “Yes” in Question No. 9.

“Clear and convincing evidence” means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

“Malice” means a specific intent by Defendants to cause substantial injury or harm.

“Fraud” occurs when—

- (a) a party makes a material misrepresentation, and
- (b) the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
- (c) the misrepresentation is made with the intention that it should be acted on by the other party, and
- (d) the other party relies on the misrepresentation and thereby suffers injury.

“Misrepresentation” means”

- (a) a false statement of fact;
- (b) a promise of future performance made with an intent, at the time the promise was made, not to perform as promised;
- (c) a statement of opinion based on a false statement of fact; or
- (d) a statement of opinion that the maker knows to be false.

“Gross negligence” means an act or omission by Defendants

- (a) which when viewed objectively from the standpoint of Defendants at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- (b) of which Defendants have actual, subjective awareness of the risk involved, but nevertheless proceed with conscious indifference to the rights, safety, or welfare of others.

	<i>Maintenance Man Video Sales</i>	<i>Men Cry in the Dark Video Sales</i>	<i>Men Cry in the Dark 2005 Tour</i>
IRP	_____	_____	_____
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je’Caryous Johnson	_____	_____	_____

QUESTION NO. 11:

Did any Defendant conspire to appropriate the Plaintiff's name for commercial advantage without Plaintiff's authorization that damaged the Plaintiff?

Answer "Yes" or "No" as to each Defendant and each act named below.

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	_____	_____	_____
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je'Caryous Johnson	_____	_____	_____

If you answered “Yes” to any act(s) of conspiracy in Question No. 11, then answer Question No. 12 as to the same act(s) of conspiracy. Otherwise, do not answer Question No. 12.

QUESTION NO. 12:

Do you find by clear and convincing evidence that the harm to Baisden caused by any act of conspiracy found in Question No. 11 resulted from malice or fraud? Answer “Yes” or “No” for each defendant and each act for which you answered “Yes” in Question No. 11. Please refer to the definitions of “malice” or “fraud” that appear in Question No. 10 to assist you in answering this question.

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	_____	_____	_____
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je'Caryous Johnson	_____	_____	_____

If you answered "Yes" to any act(s) of appropriation of Mr. Baisden's name without authorization in Question No. 9, or to any acts of conspiracy in Question No. 11, then answer Question No. 13 as to the same act(s). Otherwise, do not answer Question No. 13.

QUESTION NO. 13:

What amount of money, if paid now in cash, would fairly and accurately compensate Plaintiff for his damages, if any, that resulted from the act(s) of appropriation and conspiracy, if any, that you found in Question Nos. 9 and 11?

Consider only the value of the unauthorized use of Plaintiff's name. Do not include interest on any amount of damages you find.

Answer in dollars and cents, if any, for each of the following acts:

Maintenance Man
Video Sales

\$ _____

Men Cry in the Dark
Video Sales

\$ _____

Men Cry in the Dark
2005 Tour

\$ _____

If you found any amount of damages in response to Question No. 13, then answer Question No. 14. Otherwise, do not answer Question No. 14.

Assign percentages of responsibility only to those you found caused or conspired to cause the damages found in Question No. 13. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found.

QUESTION NO. 14:

For each person you found caused or conspired to cause the damages to Baisden found in Question No. 13, find the percentage of responsibility attributable to each:

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	_____ %	_____ %	_____ %
Image Entertainment	_____ %	_____ %	<u>Not Applicable</u> %
A.L.W. Entertainment	_____ %	_____ %	<u>Not Applicable</u> %
Gary Guidry	_____ %	_____ %	_____ %
Je'Caryous Johnson	_____ %	_____ %	_____ %
Total	<u>100</u> %	<u>100</u> %	<u>100</u> %

If you answered “Yes” to any part of Question Nos. 9 or 11, and found any amount of damages in Question No. 13, then answer Question Nos. 15-18. Otherwise, do not answer Question Nos. 15-18.

QUESTION NO. 15:

Are Plaintiff’s claims for appropriation of name without authorization and conspiracy barred by equitable estoppel? Answer “Yes” or “No” as to each Defendant and each act for which you answered “Yes” in Question Nos. 9 and 11.

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	_____	_____	_____
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je’Caryous Johnson	_____	_____	_____

QUESTION NO. 16:

Are Plaintiff's claims for appropriation of name without authorization and conspiracy barred by waiver?

Answer "Yes" or "No" as to each Defendant and act for which you answered "Yes" in Question Nos. 9 and 11.

	<i>Maintenance Man Video Sales</i>	<i>Men Cry in the Dark Video Sales</i>	<i>Men Cry in the Dark 2005 Tour</i>
IRP	_____	_____	_____
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je'Caryous Johnson	_____	_____	_____

QUESTION NO. 17:

Are Plaintiff's claims for appropriation of name without authorization and conspiracy barred by the doctrine of quasi-estoppel?

Answer "Yes" or "No" as to each Defendant and each act for which you answered "Yes" in Question Nos. 9 and 11.

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	_____	_____	_____
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je'Caryous Johnson	_____	_____	_____

QUESTION NO. 18:

Are Plaintiff's claims for appropriation of name without authorization and conspiracy barred by the doctrine of laches?

Answer "Yes" or "No" as to each Defendant and each act for which you answered "Yes" in Question Nos. 9 and 11.

	<i>Maintenance Man</i> Video Sales	<i>Men Cry in the Dark</i> Video Sales	<i>Men Cry in the Dark</i> 2005 Tour
IRP	_____	_____	_____
Image Entertainment	_____	_____	<u>Not Applicable</u>
A.L.W. Entertainment	_____	_____	<u>Not Applicable</u>
Gary Guidry	_____	_____	_____
Je'Caryous Johnson	_____	_____	_____

QUESTION NO. 19:

Are Gary Guidry and Je'Caryous Johnson responsible for the conduct of IRP?

Gary Guidry and/or Je'Caryous Johnson are responsible for the conduct of IRP if IRP was organized and operated as a mere tool or business conduit of Gary Guidry and/or Je'Caryous Johnson; there was such unity between IRP and Gary Guidry and/or Je'Caryous Johnson that the separateness of IRP had ceased and holding only IRP responsible would result in injustice; and Gary Guidry and/or Je'Caryous Johnson caused IRP to be used for the purpose of perpetrating and did perpetrate an actual fraud on Plaintiff primarily for the direct personal benefit of Gary Guidry and/or Je'Caryous Johnson.

Answer "Yes" or "No" as to each Defendant named below.

Gary Guidry

No

Je'Caryous Johnson

No

QUESTION NO. 20:

Are there any periods of time during which IRP's corporate franchise lapsed due to failure to file franchise tax reports or failure to pay franchise taxes?

Answer "Yes" or "No."

yes

If you answered "Yes" to Question No. ²⁰~~19~~, then answer Question No. ²¹~~20~~. Otherwise, do not answer Question No. 20.

QUESTION NO. 21:

State the beginning and ending dates for each period that IRP's corporate franchise lapsed due to failure to file franchise tax reports or failure to pay franchise taxes, and indicate whether Gary Guidry or Je'Caryous Johnson were officers of IRP during each period of lapse by stating "Yes" or "No" under to their name.

Period of Franchise Lapse		Was Gary Guidry an IRP Officer During the Period of Lapse?	Was Je'Caryous Johnson an IRP Officer During the Period of Lapse?
Start Date	End Date		
4/9/04	5/24/06	yes	yes

QUESTION NO. 22:

Did the Plaintiff and IRP execute a written agreement in December 2002 concerning a stage play based on *The Maintenance Man*?

Answer "Yes" or "No."

yes

QUESTION NO. 23:

Did the Plaintiff and IRP enter into an oral agreement in the summer or fall of 2005 to renew or extend the March 2001 *Men Cry in the Dark* agreement?

Answer "Yes" or "No."

yes

QUESTION NO. 24:

Did Plaintiff and IRP orally agree that each would keep its own revenues from merchandise sales in connection with the IRP stage plays without accounting to or paying royalties to the other?

In deciding whether the parties reached an agreement, you may consider what they said and did in light of the surrounding circumstances, including any earlier course of dealing. You may not consider the parties' unexpressed thoughts or intentions.

Answer "Yes" or "No."

yes

QUESTION NO. 25:

Do you find that IRP failed to comply with the July 2002 *The Maintenance Man* contract by failing to compensate Plaintiff for the sale of video recordings of *The Maintenance Man* on or after February 7, 2004?

Answer "Yes" or "No":

NO

If you answered "Yes" to Question No. 22, then answer Question No. 25(a), otherwise, do not answer Question No. 25(a).

QUESTION NO. 25(a)

Do you find that IRP failed to comply with the December 2002 *The Maintenance Man* contract by failing to compensate Plaintiff for the sale of video recordings of *The Maintenance Man* on or after February 7, 2004?

Answer "Yes" or "No":

NO

If you answered “Yes” to either Question No. 25 or 25(a), then answer Question No. 26

If you answered “No” to both Question Nos. 25 and 25(a), then do not answer Question No. 26.

QUESTION NO. 26:

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Plaintiff for the damages, if any, that resulted from IRP’s failure to comply with the July or December 2002 *The Maintenance Man* contract by failing to compensate Plaintiff for the sale of video recordings of *The Maintenance Man* on or after February 7, 2004?

Answer in dollars and cents, if any:

\$ _____

If you answered “Yes” to Question No. 25, then answer Question No. 27, otherwise, do not answer Question No. 27.

QUESTION NO. 27:

Was IRP’s failure to comply with the July 2002 *The Maintenance Man* contract by failing to compensate Plaintiff for the sale of video recordings of *The Maintenance Man* on or after February 7, 2004, excused by waiver?

Answer “Yes” or “No”:

If you answered “Yes” to Question No. 25(a), then answer Question No. 27(a), otherwise, do not answer Question No. 27(a).

QUESTION NO. 27(a):

Was IRP’s failure to comply with the December 2002 *The Maintenance Man* contract by failing to compensate Plaintiff for the sale of video recordings of *The Maintenance Man* on or after February 7, 2004, excused by waiver?

Answer “Yes” or “No”:

If you answered “Yes” to Question No. 22, then answer Question No. 28(a), otherwise, do not answer Question No. 28(a).

QUESTION NO. 28(a):

Did IRP and Image enter into a licensing agreement regarding the distribution of *The Maintenance Man* video recordings before the expiration of the December 2002 *The Maintenance Man* agreement between Baisden and IRP?

Answer “Yes” or “No”

yes

QUESTION NO. 28(b):

Did IRP and Image enter into a licensing agreement regarding the distribution of *Men Cry in the Dark* video recordings during the term that any *Men Cry in the Dark* agreement between Baisden and IRP was in effect?

Answer “Yes” or “No”

yes

IRP's Counterclaims

QUESTION NO. 29:

Do you find that the Plaintiff failed to comply with the July 2002 *The Maintenance Man* contract by failing to compensate IRP for conveying motion picture rights to *The Maintenance Man* to a motion picture company?

Answer "Yes" or "No":

 No

QUESTION NO 30:

Do you find that the Plaintiff failed to comply with the December 2002 *The Maintenance Man* contract by failing to compensate IRP for conveying motion picture rights to *The Maintenance Man* to a motion picture company?

Answer "Yes" or "No":

 No

If you answered “Yes” to Question No. 29 or Question No. 30, then answer Question No. 31. If you answered “No” to Question Nos. 29 and 30, then do not answer Question No. 31.

QUESTION NO. 31:

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate IRP for the damages, if any, that resulted from Plaintiff’s failure to compensate IRP for conveying motion rights to *The Maintenance Man* to a motion picture company?

Answer in dollars and cents, if any:

\$ _____

If you answered “Yes” to Question No. 29, then answer Question No. 32. If you answered “No” to Question No. 29, then do not answer Question No. 32.

QUESTION NO. 32:

Was Plaintiff’s failure to comply with the July 2002 *The Maintenance Man* agreement by failing to compensate IRP for conveyance of motion picture rights to *The Maintenance Man* to a motion picture company

- (a) excused by IRP’s waiver?

Answer “Yes” or “No”:

- (b) excused by IRP’s prior material breach?

Answer “Yes” or “No”:

If you answered “Yes” to Question No. 30, then answer Question No. 33. If you answered “No” to Question No. 30, then do not answer Question No. 33.

QUESTION NO. 33:

Was Plaintiff's failure to comply with the December 2002 *The Maintenance Man* agreement by failing to compensate IRP for conveyance of motion picture rights to *The Maintenance Man* to a motion picture company

- (a) excused by IRP's waiver?

Answer “Yes” or “No”:

- (b) excused by IRP's prior material breach?

Answer “Yes” or “No”:

SIGN AND DATE THE VERDICT:

SO SAY WE ALL, this 28 day of Feb., 2011.

(Print Jury Foreperson's Name)

(Jury Foreperson's Signature